

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ANA LOPEZ DEMETRIO and FRANCISCO
EUGENIO PAZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

SAKUMA BROTHERS FARMS, INC.,

Defendant.

CLASS ACTION

NO. 2:13-cv-01918-MJP

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
REGARDING CERTIFIED
QUESTIONS**

**NOTE ON MOTION CALENDAR:
March 25, 2016**

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Manual for Complex Litigation (Fourth) (“*MCL 4th*”) (2015) 11, 12, 16

I. INTRODUCTION AND RELIEF REQUESTED

On April 15, 2014, after over twelve hours of intense settlement negotiations at mediation, Plaintiffs and Sakuma Brothers Farms, Inc. reached agreement on a resolution of the pre-2014 damages claims of Plaintiffs and the class of Sakuma workers who picked fruit for the company on a piece-rate basis. The parties could not agree, however, on a central question going forward: Whether Sakuma must separately pay its piece-rate workers for their rest break time beginning in the 2014 season. Thus, the settlement agreement covered claims through 2013, and Plaintiffs reserved the right to present the rest break pay issue to this Court or ask that it be certified to the Washington Supreme Court for resolution. This way, class members could obtain a remedy for the pre-2014 claims sooner, and Plaintiffs could pursue a definitive ruling on whether Sakuma must separately pay them for rest break time beginning in 2014.

Plaintiffs pursued this approach with no guarantee of success. No Washington case had addressed whether piece-rate employers must separately pay their workers for rest breaks, and Plaintiffs were not aware of a single piece-rate agricultural employer in Washington that separately paid workers for breaks. Nevertheless, Plaintiffs were willing to take a substantial risk of losing on the issue because they strongly believed that Washington law required employers to separately pay for rest breaks for pieceworkers, and that employers around the state were violating this legal requirement.

In July 2015, the Washington Supreme Court agreed with Plaintiffs in a unanimous decision, *Lopez Demetrio v. Sakuma Brothers Farms, Inc.*, 183 Wn.2d 649, 652-53, 355 P.3d 258 (2015). The Court held that piece-rate farm workers have the right to receive separate compensation for rest break time—above and beyond their piece-rate pay. *Id.* The Court also held employers must pay each worker's average hourly rate for rest break time, and that rate cannot fall below minimum wage. *Id.*

In the months following the Washington Supreme Court's decision, the parties exchanged damages data and analysis and ultimately reached a resolution of the remaining

1 claims in this case. Plaintiffs now respectfully move for preliminary approval of the
 2 Stipulation of Settlement and Release Regarding Certified Question Claims (“Settlement”).
 3 The Settlement provides for full payment of all unpaid rest breaks for 2014, plus interest. As
 4 part of the litigation on the certified questions, Plaintiffs also successfully caused Sakuma to
 5 revise its pay model to ensure separate payment for rest breaks in 2015. Sakuma provided
 6 evidence of rest break pay for the 2015 season as a part of these settlement discussions. And,
 7 of course, Sakuma and all other agricultural employers in Washington must now separately pay
 8 for rest break time as a result of Plaintiffs’ pursuit of a definitive ruling on this issue. As part
 9 of the Settlement, the parties agree that Plaintiffs are entitled to reasonable attorneys’ fees and
 10 costs for their counsel’s work on the certified questions and resolution of the post-2013 rest
 11 break claims. If the Court grants this motion for preliminary approval, Plaintiffs will submit a
 12 separate motion for an award of attorneys’ fees and costs.

13 The Settlement is fair and reasonable and serves the best interests of the Class
 14 Members. Accordingly, Plaintiffs respectfully requests that the Court: (1) grant preliminary
 15 approval of the Settlement; (2) approve the proposed notice plan; and (3) schedule the final
 16 fairness hearing and related dates proposed by the parties.

17 **II. STATEMENT OF THE FACTS**

18 **A. Relevant Factual and Procedural Background**

19 The Court is familiar with the factual and procedural context of this case, but Plaintiffs
 20 provide the following summary for background. Sakuma and its related companies market
 21 themselves as world leaders in berry research and development, with a large nursery operation
 22 in California, a large fruit production and processing operation in Skagit County, and a
 23 complex picking operation in Skagit County. Sakuma hires immigrant workers to work in the
 24 fruit harvest at fields in Skagit County and, until 2015, traditionally paid these workers on a
 25 piece-rate basis for the amount of fruit they pick (for example, a rate per pound of
 26

1 strawberries). The workers pick strawberries, blueberries, blackberries, and raspberries during
2 the seasonal harvest each year.

3 Because Sakuma paid the piece-rate workers only for the amount of fruit they picked
4 before 2015, the company did not pay for time the workers spent in rest breaks (when, by
5 definition, they were not picking fruit). Thus, if a piece-rate worker stopped picking fruit to
6 take a rest break, the employee stopped earning money. Similarly, the company did not pay its
7 piece-rate workers for other periods of so-called “non-productive” work.¹

8 Plaintiffs filed this lawsuit in October 2013, alleging that Sakuma (1) failed to pay for
9 hours worked before and after picking fruit; (2) failed to pay minimum wage for all hours
10 worked; (3) failed to provide and pay for rest periods “on the employer’s time;” and (4) failed
11 to provide and keep accurate statements of hours worked. Plaintiffs alleged this conduct
12 violated Washington wage and hour laws and the federal Migrant and Seasonal Agricultural
13 Worker Protection Act (“AWPA”).

14 The parties engaged in extensive discovery, including multiple depositions, over several
15 months until they reached an agreement to settle the class-wide damages claims in May 2014.
16 Sakuma agreed to pay a total of \$850,000 and to provide injunctive relief by changing certain
17 employment practices the workers alleged were illegal. This Court approved this initial
18 settlement in late 2014. Dkt. #48 at 3. As part of the settlement, however, the parties were
19 unable resolve one issue: whether, beginning in the 2014 harvest, Sakuma must separately pay
20 its piece-rate workers for rest breaks under WAC 296-131-020(2), and if so, at what rate. Dkt.
21 #27 at ¶¶10, 20, 24. Thus, the workers reserved the right to propose that the Washington
22 Supreme Court resolve the issue as a certified question of law. *Id.* at ¶20.

23 Soon after this Court granted preliminary approval of the initial settlement, Plaintiffs
24

25 ¹ For the 2015 harvest, Sakuma began paying its harvest workers a base hourly rate plus a
26 production bonus based on the number of pounds picked. *See* Coral Garnick, *Sakuma Brothers Farm issues new pay plan for berry pickers*, SEATTLE TIMES (April 17, 2015),
<http://www.seattletimes.com/business/agriculture/sakuma-brothers-farm-issues-new-pay-plan-for-berry-pickers/> (last visited March 9, 2016).

1 filed a motion to certify the remaining legal questions to the Washington Supreme Court
 2 pursuant to RCW 2.60.020. Dkt. #32. Sakuma opposed the motion. Dkt. #34. This Court
 3 granted the motion, certifying the following questions to the state's high court:

4 (1) Does a Washington agricultural employer have an obligation under WAC
 5 296-131-020(2) and/or the Washington Minimum Wage Act to separately pay
 piece-rate workers for the rest breaks to which they are entitled?

6 (2) If the answer is "yes," how must Washington agricultural employers
 7 calculate the rate of pay for the rest break time to which piece-rate workers are
 entitled?

8
 9 Dkt. #42, 44.

10 Once the case reached the Washington Supreme Court, it attracted intense interest from
 11 both the agricultural industry and farm worker advocates. Amicus briefs were filed by several
 12 industry groups, including the Washington Farm Bureau Federation, the Western Growers
 13 Association, the Washington Farm Labor Association, and the Washington Growers League.
 14 Declaration of Marc C. Cote in Support of Preliminary Approval of Class Action Settlement
 15 Regarding Certified Questions ("Cote Decl.") ¶ 2. The Association of Washington Business
 16 also joined the agricultural industry in opposing the workers' arguments for separate and
 17 additional pay for rest breaks. *Id.* On the pro-worker side, amicus briefs were filed by, among
 18 other groups, the United Farm Workers of America, Farmworker Justice, the National
 19 Employment Law Project, the Washington State Labor Council, AFL-CIO, and the Washington
 20 Employment Lawyers Association. *Id.* The Washington Attorney General also filed an amicus
 21 brief supporting the workers' position. *Id.*

22 The briefing was extensive at the Washington Supreme Court level. Plaintiffs filed five
 23 substantive briefs—the opening and reply brief, plus three briefs in response to amicus briefs
 24 filed by Sakuma's industry group allies. Cote Decl. ¶ 3. The Washington Supreme Court held
 25 oral argument on March 17, 2015 in Toppenish, Washington as part of the Court's "traveling
 26 court" program. *Id.*

Plaintiffs argued to the Washington Supreme Court that that the same rule that ensures

1 payment for the “time spent” on rest breaks for employees outside of agriculture should apply
 2 to piece-rate farm workers. They asserted that excluding farm workers from wage-and-hour
 3 protections that benefit other Washington employees would be contrary to legislative and
 4 regulatory intent and Washington case law. And they argued that excluding a historically
 5 marginalized group from this essential labor protection would be unfair to the low-wage
 6 workers who toil under harsh conditions to pick the fruit and vegetables we eat. Thus,
 7 Plaintiffs asked that the Court hold that Washington employers must separately pay piece-rate
 8 farm workers for rest break time based on the workers’ weekly average hourly rate from
 9 piecework, but no less than minimum wage.

10 In a July 16, 2015 opinion, a unanimous Washington Supreme Court agreed. The Court
 11 held that “employers must pay employees for rest breaks separate and apart from the piece
 12 rate” because an “all-inclusive piece rate compensates employees for rest breaks by deducting
 13 pay from the wages the employee has accumulated that day.” *Sakuma*, 183 Wn.2d at 653. The
 14 Court explained that “[h]ourly employees do not finance their own rest breaks in this way, and
 15 requiring pieceworkers to do so strips the phrase ‘on the employer’s time’ of any practical
 16 meaning.” *Id.* With regard to the question of the proper rate for rest break time, the Court
 17 agreed with the workers that rest breaks for pieceworkers must “be paid at least at the
 18 applicable minimum wage or the employee’s regular rate, whichever is greater.” *Id.*

19 After the opinion was issued, the parties began to discuss resolution of the remaining
 20 certified-question rest break claims. *Sakuma* had continued using a piece-rate pay system in
 21 2014 under which the company did not separately pay for rest breaks. Cote Decl. ¶ 4. Thus,
 22 the parties exchanged and analyzed payroll and timekeeping data and damages calculations for
 23 the 2014 season to determine each worker’s unpaid rest break wages at the worker’s average
 24 hourly rate. *Id.* *Sakuma* also provided evidence that its new 2015 “production-bonus” system
 25 ensured full payment for rest breaks at each worker’s average hourly rate. *Id.*

26 In late November 2015, the parties reached a tentative resolution of the certified-

question claims, in which the parties agreed to the following:

(1) Sakuma's payment for all pieceworker rest breaks during the 2014 season at each worker's regular hourly rate (as determined based on the average hourly rate each week from piecework), for a total of \$87,160.96;

(2) Sakuma's payment of prejudgment interest on the full amount of rest break wages owing at 12% per year (from the time wages were due after each pay period until the judgment is entered); and

(3) Plaintiffs' entitlement to reasonable attorneys' fees and costs for their counsel's work on the certified questions and resolution of the 2014 rest break claims, pursuant to RCW 49.48.030.

Dkt. #58. Plaintiffs' counsel provided Sakuma their detailed time records to facilitate resolution of the amount of attorneys' fees and costs to be paid by Sakuma, but the parties were unable to agree on the proper amount of attorneys' fees and costs. Cote Decl. ¶ 5. Thus, Plaintiffs will submit a motion for award of attorneys' fees and costs after entry of an order granting preliminary approval of the Settlement.

The parties negotiated the remaining details of the Settlement and language of the final agreement and notice until they reached a final written agreement in late January 2016. *Id.* ¶ 6. There were delays in obtaining final signatures, however, which is why this motion was not filed at an earlier time. *Id.* An executed copy of the Stipulation of Settlement and Release Regarding Certified Question Claims, including the proposed notice, has been filed with the Court. At all times, the negotiations between the parties to reach this Settlement have been adversarial, non-collusive, and at arm's-length. *Id.*

B. Plaintiffs Thoroughly Analyzed the Certified Question Claims, Briefed and Argued the Issues to the Washington Supreme Court, and Achieved Success for the Class

The Washington Supreme Court opinion on the certified questions and this Settlement are the product of Plaintiffs' and their counsel's commitment to the best interests of the class. Plaintiffs' counsel have extensive experience advocating for immigrant workers and investigating, litigating, certifying, trying, and settling class action cases like this one. *See* Dkt. #28, ¶¶ 7-11; Dkt. #29, ¶¶ 4-5. Here, Plaintiffs' counsel spent hours investigating the factual

1 bases of the workers' rest break claims, developing the strategy for resolution of the certified
 2 question claims, researching the legal issues relating to the certified questions, and briefing the
 3 Motion to Certify Legal Questions to the Washington Supreme Court. Cote Decl. ¶ 7.

4 After this Court certified the legal questions to the Washington Supreme Court,
 5 Plaintiffs' counsel continued to work hard to achieve rest break payment for Sakuma's
 6 pieceworkers. Counsel continued investigating the facts and law in preparation for briefing to
 7 the Washington Supreme Court. They carefully crafted a persuasive opening brief to the
 8 Washington Supreme Court, fully addressed Sakuma's extensive arguments in the reply brief
 9 filed with the Washington Supreme Court, and analyzed and responded to the arguments
 10 offered by Sakuma's allies in responses to amicus briefs. Plaintiffs' counsel also diligently
 11 prepared for oral argument with the Washington Supreme Court. *Id.* ¶ 8.

12 After the Washington Supreme Court issued its opinion, Plaintiffs' counsel negotiated
 13 full payment for the unpaid 2014-season rest breaks, plus interest. *Id.* ¶ 9. Plaintiffs' counsel
 14 also obtained evidence of full payment for rest breaks in 2015. *Id.* Plaintiffs' counsel
 15 negotiated the remaining elements of the Settlement, drafted the written settlement agreement
 16 and notice, and negotiated the details of the final written documents. *Id.* ¶ 6. The result of
 17 Plaintiffs' counsel's work will be full payment of all unpaid rest break wages for 2014, plus
 18 interest, and full payment for all rest breaks for Washington piece-rate farm workers for future
 19 years.

20 **C. The Terms of the Proposed Settlement**

21 The terms of the parties' proposed Settlement are contained in the agreement filed with
 22 the Court. For this request for preliminary approval, the following summarizes the
 23 Settlement's salient terms:

24 **1. The Settlement Class**

25 For purposes of settlement, the parties have stipulated to class certification. The
 26 proposed Settlement Class will include about 780 migrant and seasonal employees of Sakuma

1 who performed piece-rate fruit harvest work for Sakuma in Washington in 2014 or 2015 (the
2 “Class Members”). Settlement Agreement ¶11. “Qualified Class Members” will include Class
3 Members who do not timely exclude themselves from the Settlement following the process
4 outlined in the Settlement Agreement. *Id.* ¶15.

5 2. The Release as to All Settlement Class Members

6 Under the Settlement Agreement, upon final approval by the Court, all Qualified Class
7 Members will release Sakuma from any and all claims for alleged violations of WAC 296-131-
8 020 that arose in 2014 or 2015. Settlement Agreement ¶21.

9 3. The Settlement Relief

10 i. *Class Payment.* Pursuant to the terms of the Settlement Agreement,
11 Sakuma will pay for all pieceworker rest breaks during the 2014 season at each worker’s regular
12 hourly rate (determined based on the average hourly rate each week from piecework) or
13 minimum wage, whichever is higher, for a total of \$87,160.96. Settlement Agreement ¶17.a.
14 Sakuma will also pay prejudgment interest on the full amount of rest break wages owing to each
15 Qualified Class Member who performed piece-rate work in 2014 at 12% per year (from the time
16 wages were due after each pay period until the judgment is entered). *Id.* ¶17.b. Sakuma will
17 directly pay the Qualified Class Members who performed piece-rate fruit harvest work in 2014
18 the payments referenced above within 180 days of an order granting final approval of the
19 settlement. *Id.* ¶17.d. Workers will not be required to make a claim to receive a payment. *Id.*
20 ¶20.c.

21 The settlement checks will be negotiable for one year from the date of issue. *Id.* If any
22 Qualified Class Members fail to cash any award checks within one year of distribution, Sakuma
23 will deliver such funds to the non-profit organization Catholic Community Services (in Skagit
24 County) as *cy pres*. *Id.* Similarly, if any Settlement Class Member opts out of the Settlement,
25 Sakuma will issue that Settlement Class Member’s portion of the Settlement funds to Catholic
26 Community Services (in Skagit County) as *cy pres*. *Id.* Sakuma will request that these funds be

1 earmarked for farm worker assistance. *Id.*

2 *ii. Attorneys' Fees and Litigation Expenses.* The Settlement Agreement
3 provides that Plaintiffs' counsel, as designated Class Counsel, are entitled to receive an award
4 of reasonable attorneys' fees and costs pursuant to RCW 49.48.030 for their work on the
5 certified questions and resolution of the 2014 rest break claims (including work performed both
6 in the federal district court and the Washington Supreme Court). Settlement Agreement ¶17.c.
7 After a preliminary approval order is entered, Plaintiffs will submit a motion for an award of
8 attorneys' fees and costs to the Court to determine the amount of the award. *Id.* The attorneys'
9 fees and costs ultimately awarded will be separate and apart from the settlement funds allotted
10 to the Qualified Class Members.

11 *iii. Administration of Settlement.* The parties have agreed that Class
12 Counsel will administer notice of the settlement, and Sakuma will issue settlement payments to
13 Qualified Class Members. Settlement Agreement ¶20.

14 4. The Notice Program

15 In conjunction with preliminary approval, Plaintiffs respectfully ask the Court to
16 approve a notice program in which Class Counsel will mail a Settlement Notice in Spanish and
17 English ("Notice") to each Settlement Class Member's last known address. Settlement
18 Agreement ¶20.b. The Notice will inform the workers of the Settlement Agreement and their
19 rights under it. *See* Settlement Agreement, Ex. A (English version of Notice). Many of the
20 Settlement Class Members are indigenous Mexican nationals who speak limited Spanish and
21 have limited reading skills. Dkt. #29 ¶¶8-9. Their native languages have no written form. *Id.*
22 ¶9. Thus, the Notice will inform recipients that they may call a phone line to hear a recording
23 with information about the Settlement in any of three indigenous languages (Triqui de San
24 Martin Intuyoso, Mixtico Alto and Mixteco Bajo).² Settlement Agreement, Ex. A.

25 Within 31 days of receiving an order granting preliminary approval of this Settlement,

26

² Plaintiffs learned through worker interviews that these are the three indigenous languages commonly spoken by Sakuma piece-rate berry harvest workers. *See* Dkt. 29 ¶9.

1 Class Counsel will mail the Notices. Settlement Agreement ¶20.b. Class Counsel will also
 2 provide a Notice to any Settlement Class Member who contacts Class Counsel and requests
 3 one. *Id.* Settlement Class Members will have 30 days after the initial mailing date to request
 4 exclusion from the Settlement or to object. *Id.* ¶20.d.-e. Furthermore, Settlement Class
 5 Members will not be required to submit a claim form to receive a Settlement payment. Rather,
 6 all Settlement Class Members who performed piece-rate fruit harvest work for Sakuma in 2014
 7 and who are eligible for a payment will receive one unless they opt out of the Settlement. *Id.*
 8 ¶20.b.

9 The Notice will inform Settlement Class Members of the anticipated, approximate
 10 amount that Class Counsel will seek in attorneys' fees and costs. *Id.*, Ex. A at 2-3. It will also
 11 inform Settlement Class Members that Class Counsel's motion for attorneys' fees and costs
 12 will be available for Settlement Class Members to review by contacting Class Counsel. *Id.* If
 13 any Settlement Class Member contacts Class Counsel and requests a copy of the motion, Class
 14 Counsel will send a copy by mail to the address provided. *Id.* Class Counsel intend to file the
 15 motion for attorneys' fees and costs and to make it available to any Settlement Class Member
 16 who requests it by no later than seven days after Notice is issued. *Id.* ¶22.b.

17 5. The Anti-Retaliation Provision

18 Sakuma has agreed it will not retaliate against any Settlement Class Member for
 19 participating in this lawsuit or benefiting from the agreed monetary relief. Settlement
 20 Agreement ¶18. The Notice reiterates that Sakuma will not retaliate against any Settlement
 21 Class Member. *Id.*, Ex. A at 1.

22 **III. ARGUMENT AND AUTHORITY**

23 **A. Class Action Settlement Approval Process**

24 As a matter of "express public policy," federal courts strongly favor and encourage
 25 settlements, particularly in class actions and other complex matters, where the inherent costs,
 26 delays, and risks of continued litigation might otherwise overwhelm any potential benefit the

1 class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
 2 1992); *see also* Herbert B. Newberg, Alba Conte, & William B. Rubenstein, *Newberg on Class*
 3 *Actions* (“*Newberg*”) § 13.44 (5th ed. 2013). Here, the proposed Settlement provides Qualified
 4 Class Members who worked in 2014 the full relief to which they are entitled.

5 The Manual for Complex Litigation describes a three-step procedure for approval of
 6 class action settlements: (1) preliminary approval of the proposed settlement; (2) dissemination
 7 of notice of the settlement to all affected class members; and (3) a “fairness hearing” or final
 8 approval hearing, at which class members may be heard regarding the settlement, and at which
 9 evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement
 10 may be presented. *Manual for Complex Litigation (Fourth)* (“*MCL 4th*”) §§ 21.632-.634
 11 (2015). This procedure, which is used by courts in this Circuit and endorsed by class action
 12 commentator Professor Newberg, safeguards class members’ due process rights and enables the
 13 court to fulfill its role as the guardian of class interests. *See Newberg* §§ 13.12; 13.41.

14 With this motion, Plaintiffs request that the Court take the first step in the settlement
 15 approval process by granting preliminary approval of the proposed Settlement. The purpose of
 16 preliminary evaluation of a proposed class action settlement is to determine whether the
 17 settlement is within the “range of possible approval,” and thus whether notice to the class of the
 18 settlement’s terms and the scheduling of a formal fairness hearing is worthwhile. *See id.* The
 19 decision to approve or reject a proposed settlement is committed to the Court’s sound
 20 discretion. *See City of Seattle*, 955 F.2d at 1276 (stating that in the context of class action
 21 settlement, an appellate court cannot “substitute [its] notions of fairness for those of the [trial]
 22 judge and the parties to the agreement” and will reverse only upon strong showing of abuse of
 23 discretion (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 626 (9th Cir.
 24 1982))).

25 The Court’s preliminary approval will allow Settlement Class Members to receive
 26 notice of the proposed Settlement’s terms and the date and time of the final approval hearing, at

1 which Settlement Class Members may be heard regarding the Settlement, and at which time
 2 further evidence and argument concerning the fairness, adequacy, and reasonableness of the
 3 Settlement may be presented. *See MCL 4th* §§ 21.632-.634. Neither notice nor a hearing is
 4 required at the preliminary approval stage; the Court may grant such relief upon an informal
 5 application by the settling parties, or even on the basis of information already known, at the
 6 Court's discretion. *See id.* at §§ 13.14, 21.632.

7 **B. The Criteria for Settlement Approval Are Satisfied**

8 While the threshold for preliminary approval requires only that the settlement fall
 9 "within the range of possible approval," a preliminary analysis of the final approval criteria
 10 shows that Plaintiffs exceed that showing. *See Newberg* at § 13.13. At the final approval
 11 stage, a proposed settlement may be approved if it is determined to be "fundamentally fair,
 12 adequate, and reasonable." *Laguna v. Coverall N. America, Inc.*, 753 F.3d 918, 921 (9th Cir.
 13 2014) (quoting *Officers for Justice*, 688 F.2d at 625), *vacated as moot*, 772 F.3d 608. Here, the
 14 Settlement is the product of serious and informed arm's-length negotiations and warrants
 15 preliminary approval. It is "fundamentally, fair, adequate, and reasonable" because it provides
 16 Qualified Class Members the wages to which they are entitled under the Washington Supreme
 17 Court's opinion on the certified questions. Indeed, the Settlement provides Sakuma's 2014
 18 pieceworkers the full amount of unpaid rest break wages, plus prejudgment interest.

19 1. The Settlement Agreement Is the Product of Serious, Informed, and
 20 Arm's-Length Negotiations After Plaintiffs Secured the Legal Ruling They
Sought from the Washington Supreme Court

21 The Court's role is to ensure "the agreement is not the product of fraud or overreaching
 22 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is
 23 fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
 24 1027 (9th Cir. 1998) (quoting *Officers for Justice*, 688 F.2d at 625). "A presumption of
 25 correctness is said to attach to a class settlement reached in arms-length negotiations between
 26 experienced capable counsel after meaningful discovery." *Hughes v. Microsoft Corp.*, 2001
 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001); *see also Pelletz v. Weyerhaeuser Co.*, 255

1 F.R.D. 537, 542-43 (W.D. Wash. 2009) (approving settlement “reached after good faith, arms-
2 length negotiations”).

3 The Settlement Agreement in this case is the result of intensive, arm’s-length
4 negotiations between experienced attorneys for both parties who are highly familiar with class
5 action litigation in general and with the legal and factual issues related to the specific certified
6 questions in this case. *See* Dkt. #28 ¶¶2-4, 7; Dkt. #29 ¶¶10-13. Plaintiffs’ counsel are
7 particularly experienced in the litigation, certification, trial, and settlement of wage and hour
8 cases similar to this case. *See id.* The Settlement Agreement and payments provided
9 thereunder are the result of months of analysis, briefing, and preparation for oral argument,
10 followed by the exchange and analysis of payroll and timekeeping data, telephone conferences
11 to discuss the data, and arm’s-length negotiations to obtain a final resolution of this matter that
12 would end the litigation. Cote Decl. ¶ 7. After the Washington Supreme Court opinion was
13 issued, the parties began to discuss resolution of the remaining certified-question rest break
14 claims for the 2014 season because, during 2014, Sakuma had continued using a piece-rate pay
15 system under which the company did not separately pay for rest breaks. *Id.* ¶ 4. Sakuma also
16 provided evidence that its new 2015 “production-bonus” system ensured full payment for rest
17 breaks at each worker’s average hourly rate. *Id.*

18 In late November 2015, the parties reached a tentative resolution of the certified
19 question claims, in which the parties agreed to: (1) Sakuma’s full payment for all pieceworker
20 rest breaks during the 2014 season at each worker’s regular hourly rate (as determined based on
21 the average hourly rate each week from piecework); and (2) Sakuma’s payment of prejudgment
22 interest on the full amount of rest break wages owing at 12% per year (from the time wages
23 were due after each pay period until the judgment is entered). After this resolution was
24 reached, Plaintiffs and Sakuma negotiated the final details of the written Settlement Agreement
25 and Notice.

26 Before reaching the Settlement, Plaintiffs’ counsel spent a considerable amount of time

1 analyzing the facts and law, briefing the legal issues, analyzing Sakuma's data, and performing
 2 calculations of the amounts owing to each 2014 pieceworker at the worker's average hourly
 3 rate. Plaintiffs reached the agreement with Sakuma only after doing a full and complete
 4 analysis of the damages to which the 2014 pieceworkers were entitled. This supports approval
 5 of the settlement. *See Hanlon*, 150 F.3d at 1027 (finding no basis to disturb the settlement, in
 6 the absence of any evidence suggesting that the settlement was negotiated in haste or in the
 7 absence of information). Class Counsel support the settlement as fair, reasonable, adequate and
 8 in the best interests of the class. Cote Decl. ¶ 10.

9 2. The Settlement Agreement Provides Full Monetary Relief for the
 10 Certified Question Rest Break Claims

11 The Settlement Agreement provides the workers full relief for their rest break claims for
 12 violation of WAC 296-131-020 for the 2014 season. Workers can obtain this relief without
 13 having to fill out a claim form. This will help ensure that all Qualified Class Members who are
 14 entitled to a payment will receive one. Furthermore, the settlement payments will be allocated
 15 in a manner that is fair and reasonable. Each Qualified Class Member entitled to a payment
 16 will receive a payment based on actual unpaid rest breaks at the worker's actual average hourly
 17 rate. Payments are up to \$700 plus interest for a pieceworker who worked the entire season and
 18 had a high average hourly rate. Cote Decl. ¶ 11. The average payment will be approximately
 19 \$231.20 plus interest. *Id.* Workers will also receive prejudgment interest on the full amount of
 20 rest break wages owing at 12% per year from the time wages were due after each pay period
 21 until the judgment is entered.

22 3. The Attorney Fee Provision Is Fair and Reasonable

23 The Settlement Agreement provides that Plaintiffs' counsel, as designated Class
 24 Counsel, are entitled to receive an award of reasonable attorneys' fees and costs pursuant to
 25 RCW 49.48.030 for their work on the certified questions and resolution of the 2014 rest break
 26 claims (including work performed both in the federal district court and the Washington
 Supreme Court). Settlement Agreement ¶17.c. This is a fair and reasonable provision because

an employer that fails to pay employees required wages must pay attorneys' fees and costs to prevailing employees who recover wages in litigation are entitled to payment of reasonable attorneys' fees and costs. *See* RCW 49.48.030 (stating that in "any action" in which employee recovers wages or salary owed, "reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer"). Here, the parties agree Class Counsel are entitled to an award of reasonable attorneys' fees and costs, but they disagree on the amount. Plaintiffs will file a separate motion requesting an award of attorneys' fees and costs, and Sakuma is expected to oppose the amount requested. The Class Notice will provide Settlement Class Members the opportunity to review and respond to Plaintiffs' motion if they ask Class Counsel for a copy. However, the amount of attorneys' fees and costs that the Court awards to Class Counsel will not affect the amount of settlement payments the workers will receive.

4. The Attorney Fee and Cost Petition Will Be Available to Settlement Class Members Before the Objection Deadline.

Courts must allow class members the opportunity to examine the final motion for attorneys' fees and costs before the deadline for objections to a class section settlement. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010). Class Counsel's motion for an award of attorneys' fees and costs will be available for Settlement Class Members to review by contacting Class Counsel using the contact information listed on the Class Notice. Settlement Agreement, Ex. A at 2-3. Furthermore, the Notice will state the anticipated, approximate amount of attorneys' fees and costs Class Counsel will request in their motion. *Id.* Settlement Class Members will have a reasonable opportunity to respond to the motion for an award of attorneys' fees and costs if they wish to do so.

C. Provisional Certification of the Class Is Appropriate

This Court has already certified a class for purposes of settlement, including for purposes of resolving the previously unreleased claims for separate payment for rest breaks in 2014. *See* Settlement Agreement, ¶12; Dkt. #31 at ¶¶2, 14; Dkt. #48 at ¶¶3-6, 15. As part of

1 this Settlement, the parties again stipulate and agree “that the requisites for establishing class
 2 certification with respect to the Settlement Class have been met and are met, and therefore,
 3 stipulate to class certification.” Settlement Agreement, ¶12.

4 Thus, for settlement purposes, Plaintiffs respectfully request the Court provisionally
 5 certify the following class: “All migrant and seasonal employees of Sakuma who performed
 6 piece-rate fruit harvest work for Sakuma in Washington in 2014 or 2015.” *Id.* ¶11. Provisional
 7 certification of a class for settlement purposes permits notice of the proposed settlement to
 8 inform class members of the existence and terms of the proposed settlement, of their right to be
 9 heard on its fairness, of their right to opt out, and of the date, time and place of the formal
 10 fairness hearing. *See MCL 4th* §§ 21.632, 21.633.

11 Here, certification of the Settlement Class is appropriate under Rule 23(b)(3), and
 12 Sakuma stipulates and agrees to class certification for purposes of this settlement. Settlement
 13 Agreement, ¶12. The numerosity requirement of Rule 23(a) is satisfied. Sakuma has
 14 confirmed that the class consists of approximately 780 migrant and seasonal employees. *See*
 15 Settlement Agreement ¶11. Joinder of all such persons is impracticable. *See Fed. R. Civ. P.*
 16 23(a)(1). The commonality requirement is satisfied because the certified questions presented
 17 questions of law common to all class members. *See Fed. R. Civ. P.* 23(a)(2); Settlement
 18 Agreement, ¶12.c. The typicality requirement is satisfied because Plaintiffs’ claims arise from
 19 the same course of conduct that gives rise to the claims of other Class Members. *See Fed. R.*
 20 *Civ. P.* 23(a)(3); Settlement Agreement, ¶12.c. The adequacy of representation requirement is
 21 satisfied because Plaintiffs have fairly and adequately the interests of the class by securing full
 22 payment for all unpaid rest breaks. *See Fed. R. Civ. P.* 23(a)(4). The predominance
 23 requirement is satisfied because common legal questions present a significant aspect of the case
 24 and have been resolved for all Settlement Class Members in a single adjudication. *See Fed. R.*
 25 *Civ. P.* 23(b)(3); *see also Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas*
 26 *Sands, Inc.*, 244 F.3d 1152, 1162-63 (9th Cir. 2001).

1 Because the claims are being certified for purposes of settlement (rather than trial),
 2 there are no issues with manageability (*see Newberg* § 13.18). Resolution of hundreds of
 3 claims in one action is superior to individual lawsuits and promotes consistency and efficiency
 4 of adjudication. *See* Fed. R. Civ. P. 23(b)(3). Thus, certification of the class for settlement
 5 purposes is appropriate.

6 **D. The Proposed Notice Program Is Constitutionally Sound**

7 To protect Settlement Class Member rights, the Court must provide the best notice
 8 practicable regarding the proposed settlement. Fed. R. Civ. P. 23(c)(2)(B).³ The best
 9 practicable notice is that which is “reasonably calculated, under all the circumstances, to
 10 apprise interested parties of the pendency of the action and afford them an opportunity to
 11 present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314
 12 (1950).

13 Settlement Class Members can be reasonably identified through Sakuma’s own records,
 14 which contain information on all of the company’s seasonal and migrant fruit harvest workers,
 15 including each person’s last known phone number and address. Cote Decl. ¶ 12. The parties
 16 propose sending notice in the form attached as Exhibit A to the Settlement Agreement directly
 17 via First Class mail to all Settlement Class Members. Class Counsel will also create telephone
 18 message lines to provide an oral summary of the Notice in the indigenous Mexican languages
 19 that many workers speak. This comprehensive approach will ensure notice reaches as many
 20 workers as possible.

21 The language of the Notice is plain and understandable, providing neutral and objective
 22 information about the nature of the settlement. It will be sent to each Settlement Class Member
 23 in Spanish and English, and the oral summaries in indigenous languages will also be available
 24 by phone. The Notice includes the definition of the Settlement Class, a statement of each

25 ³ *See also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (noting that provision of “best notice
 26 practicable” under the circumstances with description of the litigation and explanation of opt-out rights satisfies
 due process); *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994) (holding “[w]e do not believe that *Shutts*
 changes the traditional standard for class notice from ‘best practicable’ to ‘actually received’ notice”).

1 Settlement Class Member's rights, detailed explanations of how to share in the settlement
 2 funds, a statement of the consequences of remaining in the Settlement Class, an explanation of
 3 how Settlement Class Members can object or exclude themselves from the Settlement, and
 4 methods for contacting Class Counsel to obtain more information. *See* Settlement Agreement,
 5 Ex. A. Plaintiffs submit the notice program outlined in the Settlement Agreement is the best
 6 practicable notice under the circumstances of this case.

7 **IV. CONCLUSION**

8 Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the
 9 Settlement; (2) provisionally certify the proposed Settlement Class; (3) approve the proposed
 10 notice plan; and (4) schedule the final fairness hearing at the Court's convenience but no earlier
 11 than June 27, 2016.

12 **RESPECTFULLY SUBMITTED AND DATED** this 10th day of March, 2016.

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CERTIFICATE OF SERVICE

I, Marc C. Cote, hereby certify that on March 10, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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